

1895-057
Lee Co.

Chancery Causes: J. D. Olinger, assign vs. Phillip Whisman

Thompson, Wade

CA-Debt

T-Property

To The Honorable W. T. Miller Judge of the Circuit
Court of Lee County;—

Humbly Complaining, sheweth unto your honor
your orator John D. Oliver assignee of J. B. Thompson
that on the 16th day of June 1894, he obtained in the
said Court a judgment against Phillip Whisman
of the said County, for \$34⁷⁵ with interest thereon
at six per centum per annum from the 5th day of
March 1891 till paid and \$7²⁶ costs (a copy of said
Judgment is here filed marked "A") and as to be treated
as part of this bill on which said Judgment
a writ of Fieri Facias was duly issued from the
Clerk's office of the said Court, directed to the
Sheriff of the said County, returnable to ^{17th Sept} rules
1894, which was placed in the hands of the said
Sheriff to be executed, and was on the return day
thereof returned by the said Sheriff with the
following return endorsed thereon, to wit: "No
property found. L. M. Wade Deputy for C. E. Manney
S. P. C." Said Fieri Facias and endorsement thereon
is here filed marked "B" and as to be treated as
part of this bill. Now your orator further states
that the said Phillip Whisman is seized and
possessed in fee simple of a tract of land lying
and being in the said County and in the Crab
Creek, containing 50 acres more or less and
bounded by the lands of C. Shump and others.
And that he is advised that his Judgment (no part
of which has been paid, is a subsisting lien under
the Statute law of Virginia, on the said real estate
having been duly docketed and recorded in the
County Court Clerk's office in the Judgment Lien book

1 Your orator alleges that the said profits
2 of the said real estate will not satisfy the said
3 judgment in four years at the rate of 10% per
4 annum, In tender consideration whereof
5 for much as your orator is under the necessity
6 of being by the aid of a court of equity to have the
7 of this kind of case and highly favorable
8 your orator prays that the said Philip Whisman
9 be made party defendant to this bill, and required
10 on his corporate oath to answer the same,
11 according to the best of his knowledge and belief, as
12 fully and particularly as if the statements of this
13 bill were here again repeated, and the said defendant
14 thereto specially interrogated; that the said real estate
15 or so much thereof as may be necessary, be sold to
16 satisfy your orator's judgment, and that your
17 honor will grant unto your orator such
18 further and general relief as may be consistent
19 with equity and the case requires.

20 May it please and your orator will ever
21 pray etc

Wm. G. Ely Jr.

Defto Costs
Recovered

C. 2.80

Atty 5.00

J.P. 1.50

Wits 50

Co C. 25

\$10.05

1m. 14 July -
J.D. Olinger Deft
vs Billie Phancus
Phillip Whisman Deft.

1895 2nd July Rules bill
Spa 2nd Decree nisi

" 1st March rules taken
The last Monday in July
Decree nisi Conf'd
Cause set for hearing

" June Term Court
" Poor Term Decree
final O.B. Page 308
Plffs Costs

C 3.11

S 50

3.61

Tax 1.50

\$5.11

Defto Costs

C 2.80

Atty 5.00

J.P. 1.50

Wits 50

Co C. 25

November Term 1895
Decree final O.B. P. 308

Lee Circuit Court.

Phillip Whisman

vs.

J. D. Olinger, assignee of T. B. Thompson.

The demurrer and answer of Phillip Whisman to a Bill in Chancery filed in Your Honor's Court by J. D. Olinger, assignee of T. B. Thompson. The demurrer respondent says that plaintiff's said Bill is not sufficient in law, wherefore he prays Judgment.

But if other and farther answer be required, respondent answering says; that he sees by the exhibits filed with the Bill that Judgment was entered up against him; but he says that it was wrongfully entered up, as he was not served with process in the Common Law action upon which this Judgment is founded. This fact is shown by the return of the officer endorsed on said process, a certified copy of which is herewith filed, marked exhibit "1" which is prayed to be treated

as part of this answer.

Respondent says that he had no notice of said Common Law suit, and that he did not appear to said process, or waive the same; or in any way or manner consent to said Judgment.

Your Respondent is advised therefore, that said Judgment is void at law, and that Your Honor has no jurisdiction to entertain the plaintiffs Bill herein.

Respondent says that he has a substantial defence to the debt sued on, which he will plead when opportunity is properly offered for him to do so.

Wherefore Respondent prays that the plaintiffs Bill be dismissed with costs, and that this answer be treated as a Cross bill against the plaintiff, and that the Judgment thus wrongfully obtained against him be set aside and declared to be null and void, And your Respondent will ever pray etc.

Jackson & Jones, sol.

And your respondent prays for such
further and general relief as his case requires.

Virginia,

Lee County, to wit:

This day Phillip Whisman made
oath before me in my County
aforesaid that the statements made
in his foregoing answer, so far
as made from his own knowledge
are true; and as far as made from
information derived from others
he believes ^{them} to be true.

Given under my hand, this the
4th day of March, 1895.

A. B. Munsey Clerk

This answer is expected to be brief,
1st. It does not answer the material allegations
of the bill, &
2nd. because the answer and exhibits ~~there~~
with ^{filed} ~~tend~~ to contradict the records.
The return ~~filed~~, is only prima facie, while
the records of the Court and the rule book
is conclusive evidence.
3. Defendant does not state whether or not
any other dep. than the one ~~filed~~ as
exhibited was presented on him.

M. G. Ely atty for def

Philip Whisman

ads ans

J. D. Olinger, assignee

Filed March 25th

1895

W. B. Murray

Clerk

J. D. Olinjer, assignee &c
vs. ~~Lucas~~
Phillip Whisman

This cause came on this day to be heard upon the papers formerly read herein, and the depositions of witnesses filed on the on the first day of June 1895, and was argued by counsel. On consideration whereof, ~~it is adjudged, ordered and decreed that~~ ~~the~~ and it appearing to the court that the judgment attempted to be asserted as a lien was rendered against the defendant without ever serving him with process, it is adjudged ordered and decreed that the plaintiff's bill be dismissed, and that the defendant recover of the plaintiff his costs in his behalf expended, to be taxed by the clerk, for which execution may issue. And the cause is ~~now~~ ~~dismissed~~ stricken from the docket.

J. D. Olinger assignee

vs decree

Philip Whisman

O.B.P. 308

Enter this

W. J. M.

Nov. 15, 1895.

John D. Cling

vs.

} Decree No 1

Philip Whisman

This cause came on this day to be heard upon the bill of complaint and exhibits therewith filed, the answer and answer of defendant and exhibits therewith General replication thereto and exceptions to said answer, and was argued by counsel. On consideration of which the court adjudges that said exceptions be overruled, and the cause is continued.

John D. Olinger
vs. Duce - 1
Phillip Whisman

O.N.

Page 178

Enter this
WIM

March 12th 1895

Philip Whisman a witness of lawful
age, being first duly sworn deposes and says:

The deposition of Philip Whisman and others, taken before me John Riddle, a justice of the peace, for the County of Lee, State of Virginia, pursuant to notice hereto annexed, at my residence in Turkey Cove, Va, on the 31st day of May, 1895, between the hours of 6 AM and 6 PM, to be read as evidence in behalf of Philip Whisman, in a certain suit in Chancery, depending in the Circuit Court of Lee County, Virginia, wherein J. D. Olinger, assignee of T. B. Thompson is plaintiff and Philip Whisman is defendant.

Present, C. H. Jones, Atty for defendant;

Ques. 1 Please state your age, residence and occupation?

Ans 1 21 or two Residence Olinger Va farming.

Ques 2 Are you ~~the~~ the defendant in this, ^{suit?}

Ans 2 yes sir

Ques 3 Please state whether or not you ever had process served upon you in the Common law cause of J. D. Olinger assignee of T. B. Thompson against yourself, and upon

which Judgment was entered
up against you; and which
is now sought to be enforced
by this Chancery suit;

Ans 3

no sir I never had no notice of that
suit no process of that suit was ever served
on me

Ques 4

State whether or you ever waived
service of process in that suit;
and whether you in any
way consented to said Judg-
ment being entered against you

Ans 4

no sir never waived process in that suit
nor in any way consented

Ques 5

at what time first
Please state ~~when~~ you ~~first~~ had
knowledge of the fact that there
had been a Judgment rendered
against you in favor of
J D Olinger, assignee of J B Thompson
The first time ^{that} I ^{had} knowledge that there
was a Judgment against me in favor of said
Olinger was when I was served with process in
this ^{Chancery} suit and went to Jonesville to see about it
~~for this~~

and further this apponet saith not

Phillip ^{his} Whisman
mark

No other appearing, the further taking
of these depositions is adjourned till
tomorrow June 1st, 1895

John Kiddle J.P.

L. M. Wade, another witness of lawful age, being first duly sworn deposes and says as follows.

Ques 6 State your residence and occupation?

ans 6 Turkey Cove Va Farming & I act as Deputy Sheriff

Ques 7 Do you as Deputy Sheriff execute process of the Lee ~~County~~ Courts in this part of the County; if so please state if you can whether any process came to your hands to be executed on Phillip Whisman in any ^{at law} action, which was brought against ^{him} by J. D. Olinger, assignee of J. B. Thompson. State also if you can how if such process came to your hands you executed it?

ans 8 I do. Such process did come to my hand to be executed, in which J. D. Olinger assignee of J. B. Thompson was Plaintiff and Phillip Whisman Defendant the same was not executed and I made my return accordingly on the said process.

and farther this deponent
saith not,

L. M. Wade

Virginia;

Lee County to-wit:

I John Riddle, a Justice of the
Peace, in and for the County
aforesaid, hereby certify that the
forgoing depositions of Philip
Whisman and L. M. Wade was
taken, subscribed and sworn
to before me in my County
aforesaid, at the time and
place and for the purpose
set out in the caption.
Given under my hand this
June 1st, 1895

John Riddle J.P.

Philip Whisman

also Depositions

J. D. Munsey, assignee

Received by mail on
good condition and
filed June 1st 1895
J. D. Munsey Clerk

Justice Fee \$1.50

Witness
\$2.50

To John D. Olinger, assignee of T. B. Thompson.
Take notice: That on the 31st day of May,
1895, between the hours of 6 A.M. &
6 P.M., at the residence of John Riddle,
Turkey Cove, Virginia, I will take
the depositions of myself and
others, which when taken are in-
tended to be read as evidence in
my behalf in a suit in Chancery
now pending in the Circuit Court
of Lee County, wherein you as as-
signee of T. B. Thompson are plain-
tiff and I am defendant. And
if from any cause the taking of said
depositions be not commenced, or
if commenced be not concluded
on that day, the taking thereof will
be adjourned from time to time,
and place to place, until completed.
This May 28th 1895,

Phillip Whisman.

By Counsel.

Phillip Whisman

ads. Notice to take
depositions.

John D. Olinger, assign, etc

I accept legal service of the within notice, this May 29th 1905

J. D. Olinger

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

Phillip Whisman

to appear at the Clerk's office of the Circuit Court of the county of Lee, at the court house on the

3rd

Monday in

April

next to answer

J. D. Olinger assignee of L. B. Thompson

upon a plea of

Debt

damages \$

38.00

And have then there this writ. WITNESS, A. B. MUNSEY, Clerk of our said court, at the court house, the

30th

day of

March

1894,

and in the 11

8th

year of the Commonwealth

A copy Teste

~~A copy Teste~~

A. B. Munsey

Clerk.

A. B. Munsey Clerk

Ely)

(Circuit)

J. D. Olinger assignee
vs. Sumro Debt
Phillip Whismann

To 2nd April Rules 1894

Not executed not found
this April 4-1894

L. M. Wade D. J. for
C. E. Flanary D. C.

Exhibit '1'

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That of the goods and chattles of

Phillip Whisman

in your bailiwick, you cause to be made

*\$34.75 - Thirty four dollars
& Seventy five Cents*

with interest at the rate of six per centum per annum from the *5th* day of *March* 189*1*
until paid, which *J D Olinger assignee*

late in our Circuit Court of the County of Lee, has recovered against the said

Phillip Whisman

, as well for a debt as interest thereon; also

Seven

dollars and

Minety Six

cents, which to the said

in the same court were adjudged for *his* costs
by *him* about *his* suit in that behalf expended, whereof the said *Whisman*

convict as appears to us of record. And how you shall execute this writ make known at the rules to be
holden in the clerk's office of our said Circuit court, on the *1st* Monday in *September*
next. And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said court, at the court-house, the

26th

day of

June

189*4*, and in the *11^{8th}* year of the Commonwealth.

A B Munsey Clerk

Not Executed
no property
found this Aug
the 18th 1894
L. M. Wade D. S.
for C. E. Flannery
S. L. C.

E. B. No. 4 p. 158

J. D. Olinger assigns

US. {

FI. FA.
IN DEBT.

Phillip Wherman

M. G. Ely p. q.

Came to hand July 7

1894, at 3 o'clock P. M.

C. E. Flannery S. L. C.

To 15th Sept Rules,
Circuit Court.

Jud. June 16 1894
O. B. No. 3 p. 383

The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

WE COMMAND YOU, That you summon

Phillip Whisman

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said

Court on the *3rd* Monday in *February*, 189*5*, to answer a Bill in Chancery,

exhibited against *him* in our said court by *J. D. Olinger*
assignee of T. B. Thompson

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the

4th day of *February* 189*5*, and in the 11 *9th* year of the

Commonwealth.

A. B. Munsey Clerk.

J. D. Olinger assignee

vs.

SUPCENA
IN CHANCERY.

Phillip Whisman

M. G. Ely

p. q.

To 2nd Feby

Rules,

Circuit Court.

Executed Feb the
15th 1895 by Delivering
a copy of the within
sums to Phillip
Whisman. This
Feb the 16th 1895
L. M. Wade D. C. for
H. E. Filmer
S. L. L.